

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B04
PLR-143926-07

Date:
November 26, 2007

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Business A =

Business B =

a =

Dear :

This letter responds to your September 28, 2007 letter requesting rulings as to the federal income tax consequences of a proposed transaction. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is a holding company and the parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing has a single class of common stock outstanding. Distributing wholly owns each of Controlled and Sub 1. Distributing is engaged in Business A through its ownership of Sub 1.

Controlled is a holding company that has a single class of common stock outstanding. Controlled is engaged in Business B through its ownership of foreign subsidiaries, including wholly-owned Sub 2.

Financial information has been submitted which indicates that Business A (conducted by Sub 1) and Business B (conducted by Sub 2) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing intends to separate Business A from Business B for the following business purposes: (1) to allow management of Distributing and Controlled to focus more effectively on their respective businesses and the varied market dynamics; (2) to achieve substantial cost savings resulting from reduced corporate overhead; (3) to provide greater aggregate debt capacity to both Distributing and Controlled; (4) to enhance the ability of Distributing and Controlled to make acquisitions including by using more-efficient focused equity; (5) to use focused equity to more tightly align compensation and rewards with the performance of each entity; and (6) to allow

Distributing and Controlled to target their respective shareholder bases more effectively and optimize capital allocation within each company.

Proposed Transaction

For what are represented to be valid business purposes, Distributing proposes the following steps (the “Proposed Transaction”):

- (i) Controlled will distribute approximately \$a to Distributing (the “Cash Dividend”).
- (ii) Distributing will distribute all of the Controlled stock pro rata to Distributing shareholders (the “Distribution”).

In connection with the Proposed Transaction, Distributing and Controlled will enter into several agreements relating to the separation of Controlled and certain continuing transactions between the companies, including a tax matters agreement (the “Tax Matters Agreement”) and certain other ancillary agreements (together with the Tax Matters Agreement, the “Ancillary Agreements”).

Representations

The following representations are made with respect to the Distribution:

- (a) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) Except for distribution of restricted shares of Controlled stock to holders of restricted shares of Distributing stock, no part of the consideration distributed by Distributing in the Distribution will be received by a Distributing shareholder as a creditor, employee, or in any capacity other than that of a Distributing shareholder. In no event will the restricted stock distribution represent more than 20 percent of the Controlled stock in the Distribution.
- (c) The five years of financial information submitted on behalf of Business A as conducted by Sub 1 (a member of the Distributing separate affiliated group (the “SAG”) as defined in § 355(b)(3)(B)) is representative of the present business operations of Business A as conducted by Sub 1, and with regard to Business A, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The five years of financial information submitted on behalf of Business B as conducted by Sub 2 (a member of the Controlled SAG) is representative of the present business operations of Business B as conducted by Sub 2, and with regard to

Business B, there have been no substantial operational changes since the date of the last financial statements submitted.

(e) Following the Proposed Transaction, the Distributing SAG and the Controlled SAG will each continue the active conduct of each of its businesses, independently (except as contemplated by the Ancillary Agreements) and with its separate employees.

(f) No intercorporate debt will exist between Distributing and its subsidiaries, on the one hand, and Controlled and its subsidiaries, on the other hand, for more than thirty days subsequent to the Distribution, except for short-term payables arising under the Ancillary Agreements, or indebtedness otherwise arising in the ordinary course of business.

(g) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(h) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

(i) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

(j) The Distribution is being carried out for the following corporate business purposes: (1) to allow management of Distributing and Controlled to focus more effectively on their respective businesses and the varied market dynamics; (2) to achieve substantial cost savings resulting from reduced corporate overhead; (3) to provide greater aggregate debt capacity to both Distributing and Controlled; (4) to enhance the ability of Distributing and Controlled to make acquisitions including by using more-efficient focused equity; (5) to use focused equity to more tightly align compensation and rewards with the performance of each entity; and (6) to allow Distributing and Controlled to target their respective shareholder bases more effectively and optimize capital allocation within each company. The Distribution is motivated, in whole or substantial part, by these corporate business purposes.

(k) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both.

(l) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold Distributing stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(m) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold Controlled stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(n) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(o) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing's excess loss account, if any, with respect to Controlled stock will be included in income immediately before the Distribution.

Rulings

Based solely on the information submitted and the representations made, we rule as follows on the Proposed Transaction:

(1) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders upon the receipt of Controlled stock in the Distribution. § 355(a)(1).

(2) No gain or loss will be recognized by Distributing on the distribution of the Controlled stock in the Distribution. § 355(c)(1).

(3) The aggregate basis of the Distributing stock and the Controlled stock received by the Distributing shareholders after the Distribution will be the same as the basis of the Distributing stock in the hands of its shareholders immediately before the

Distribution, allocated in the manner described in § 1.358-2(a). § 358(a), (b), and (c), § 1.358-1(a).

(4) The holding period of the Controlled stock in the hands of the Distributing shareholders will include the holding period of the Distributing stock held by each Distributing shareholder prior to the Distribution, provided that the Distributing stock is held as a capital asset on the date of the Distribution. § 1223(1).

(5) As provided in § 312(h), earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with §§ 1.312-10 and 1.1502-33.

(6) The Cash Dividend will be treated as a distribution to which § 301 applies. § 301(a), § 1.1502-13(f)(2).

Caveats

No opinion is expressed about the tax treatment of the proposed transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the proposed transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the proposed transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representatives.

Sincerely,

Richard K. Passales

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)